

67-1000-12

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

LIBERTY CELLULAR, INC.)

File No. _____

For a Declaratory Ruling Concerning the)
Commission's First Report and Order in)
the Matters of Implementation of the)
Local Competition Provisions in the)
Telecommunications Act of 1996 and)
Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 96-98

CC Docket No. 95-185

To: The Commission

PETITION FOR DECLARATORY RULING

Liberty Cellular, Inc. ("Liberty" or "Petitioner"), by its attorneys and pursuant to Section 1.2 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. §1.2, respectfully requests a declaratory ruling by the Commission to clarify the meaning of the term "transport" as used in the Commission's First Report and Order in the above-captioned docket proceedings ("Interconnection Order").^{1/} Petitioner seeks an interpretation or clarification of the meaning of "transport" in view of the inability of Petitioner and Southwestern Bell Telephone

^{1/} First Report and Order In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, 11 FCC Rcd 15499, released August 8, 1996.

L. W. Stephens
Clerk

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company ("SWBT") to agree on the rights and obligations of an incumbent local exchange carrier ("LEC") on a reciprocal compensation issue. In support of this request the following is shown:^{2/}

I. Background

1. Liberty is a Kansas corporation headquartered in Salina, Kansas. Liberty is owned by twenty-five LECs and others, directly or through affiliates, who participate in regional ownership of cellular radio facilities, common carrier point-to-point microwave radio service facilities, and a fiber optic network, as well as related, supporting facilities. All of Liberty's cellular facilities are in Kansas service areas.

2. In December 1997 Liberty and SWBT entered into an agreement for interconnection and reciprocal compensation for local telecommunications traffic between the two companies. Pursuant to that agreement, which was approved by the Kansas Corporation Commission and is now in effect, Liberty and SWBT have exchanged invoices related to the reciprocal payment obligations of the parties.

3. Petitioner's invoices to SWBT which relate to the transport of SWBT-originated traffic that is terminated by Petitioner within the same Major Trading Area ("MTA") have not been paid in full by SWBT, apparently due to differing understandings by Petitioner and SWBT of the

^{2/} Petitioner notes that Section 1.1206(a) of the Commission's rules classifies a declaratory ruling proceeding as a "permit-but-disclose" proceeding under the Commission's *ex parte* rules.

meaning of the term "transport" as used in their agreement and in the Commission's Interconnection Order and rules. Importantly, the purpose of this petition is not to seek the Commission's interpretation of terms of the interconnection agreement or to request that the Commission resolve a dispute concerning the agreement. There are dispute resolution procedures set forth in the agreement for that purpose. Rather, Petitioner requests the Commission's clarification of the meaning of the term "transport" as appearing in the Interconnection Order and the rules. The requested clarification will serve as a predicate to further discussions between Petitioner and SWBT and, if necessary, aid in the review of the agreement by arbitrators in accordance with the agreement's dispute resolution terms.

II. The Definition of "Transport" as Distinguished by the Commission from "Termination"

4. The Commission's Interconnection Order distinguished transport and termination as two distinct functions. Transport, for purposes of Section 251(b)(5) of the Telecommunications Act of 1996, was defined as "the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier)."^{3/} Termination was defined as "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that

^{3/} Interconnection Order at p. 16015.

switch to the called party's premises."^{4/} Notably, the definition of transport does not include any limitation on where the terminating carrier's end-office switch (or equivalent facility in the case of the non-incumbent LEC) is located, although it is implicit that such facility must be within the same MTA where the call was originated or the traffic would not be "local" and subject to the reciprocal compensation obligation.^{5/}

III. Liberty's Understanding of the Transport Obligations of LECs Under Reciprocal Compensation Principles

5. In the Interconnection Order the Commission recognized that the largest licensed service area of a Commercial Mobile Radio Service ("CMRS") provider is the MTA. Traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination compensation under Section 251(b)(5).^{6/}

6. According to reciprocal compensation principles, a LEC is obligated to pay transport costs for intra-MTA traffic originated on the LEC network that is terminated by a CMRS provider.^{7/} If two-way facilities are used for transport purposes, the LEC and CMRS provider would share the cost of the facilities according to the balance of intra-MTA traffic which flows from one to the other. Likewise, if the parties use one-way facilities to transport intra-MTA traffic, each would be

^{4/} Id. at 16015.

^{5/} Id. at 16014.

^{6/} Id.

^{7/} Id. at 16016-16017.

responsible for the cost of the facilities needed to deliver the traffic to the other's end office switch or, in the case of the CMRS provider, the equivalent of the end office switch.

7. Petitioner and SWBT diverge in their understandings of the transport obligation in one important regard. SWBT apparently contends that it has no obligation for transport costs, relating to SWBT-originated traffic terminated by Liberty within the same MTA, to the extent that the transport facilities are outside the telephone service area of SWBT. In other words, once SWBT transports the call to its exchange area boundary, SWBT believes that its transport obligation is completed even though it has not assured the delivery of the call to Liberty's switch in the same MTA.^{8/}

8. Petitioner's understanding of the transport obligation is quite different from that of SWBT. Petitioner reads the Interconnection Order and Section 51.703 of the rules to require SWBT to pay the cost for transport of a SWBT-originated call to the Liberty switch within the same MTA. SWBT's obligation does not cease at its exchange area boundary. Liberty does not read the Interconnection Order or the rules to limit SWBT's obligations in this regard. The Interconnection Order states that LECs must cease charging a CMRS provider for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.^{9/}

^{8/} SWBT observes that it is not authorized to carry traffic across a LATA boundary, at least at this time. The question of who carries the traffic is of no concern to Liberty; the obligation for the cost of transport is the issue.

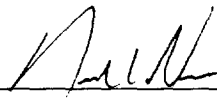
^{9/} Id. at 16016. If SWBT is correct, and it has no obligation to pay for transport beyond its
(continued...)

Conclusion

Liberty respectfully requests the Commission to issue a declaratory ruling which interprets and clarifies the responsibilities of LECs and CMRS providers as set forth in its Interconnection Order and Section 51.703 of the rules with respect to whether a LEC is responsible for the cost of transport of LEC-originated traffic beyond the boundaries of its service area to the switch of a CMRS provider located within the same MTA. Petitioner submits that the originating LEC should be responsible for the cost of delivering its own intra-MTA traffic to the switch of the CMRS provider.

Respectfully submitted,

LIBERTY CELLULAR, INC.

By 
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November 10, 1998

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^{2/} (...continued)

exchange boundary, the question arises of who is responsible for the remaining cost of transport of an intra-MTA call. Would a third party LEC, whose exchange area borders SWBT, be responsible for a portion of the transport cost even though the call was originated by a SWBT landline customer? Petitioner's research discloses no authority for any such obligation upon a third party LEC; indeed, there is no certainty that a third party LEC would handle the call since it could be routed over the facilities of another telecommunications services provider.

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 10th day of November, 1998, sent by hand-delivery, a copy of the foregoing Petition For Declaratory Ruling to the following:

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